

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

Julie Irvine, guardian ad litem of	)	
Juan Alvarez, Aubrey Archambeau, and	)	
Joseph Baker, as named plaintiffs on behalf	)	
of a class,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. 21-cv- <u>4224</u>
	)	
Jeremy Johnson, Administrator,	)	
South Dakota Human Services Center,	)	
sued in his official capacity,	)	
	)	
Defendant.	)	
_____	)	

**Class Action Complaint for Preliminary and Permanent  
Injunctive and Declaratory Relief**

### **Parties**

1. Julie Irvine is the guardian ad litem of Juan Alvarez, Aubrey Archambeau, and Joseph Baker, who are accused of crimes, and have been found incompetent. They have been ordered committed to attempt to restore them to competency, but are warehoused in county jail because the attempt to restore them to competency has not begun.

2. Jeremy Johnson is the administrator of the South Dakota Human Services Center, and is sued in his official capacity.

### **Jurisdiction**

3. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3), and may grant relief under these laws and 28 U.S.C. §§ 2201-02.

### **Class Action Pursuant to F.R.Civ.P. 23(a), (b)(1), and (b)(2)**

4. This is a class action that seeks a preliminary and permanent injunction on behalf of mentally ill people who are accused of crimes in South Dakota, have been found incompetent, and are incarcerated for longer than allowed by the due process clause awaiting an attempt to restore them to competency, and mentally ill people who in the future will be accused of crimes in South Dakota, found

incompetent, and incarcerated for longer than allowed by the due process clause awaiting an attempt to restore them to competency .

### Facts

5. On August 26, 2021, Juan Alvarez was ordered committed and transported to the South Dakota Human Services Center to attempt to restore him to competency, but remains in jail and has not been transported.

6. On September 8, 2021, Joseph Baker was ordered transported to “a residential state mental health facility or facility authorized by statute to provide restorative services” to attempt to restore him to competency, but remains in jail and has not been transported.

7. On October 12, 2021, Aubrey Archambeau was ordered “immediately” committed and transported to the South Dakota Human Services Center to attempt to restore him to competency, but remains in jail and has not been transported.

8. Other class members are subject to similar orders in other counties, but remain in jail for longer than allowed by the due process clause and have not been transported to attempt to restore them to competency.

9. The class members are suffering direct and current injury as a result of defendant's conduct, and will suffer such injury in the future until their unconstitutional confinement ends.

10. Mentally ill people who become class members in the future will be subject to similar orders, will be held in county jails and not be transported for longer than allowed by the Fourteenth Amendment, and will suffer similar injury.

11. The class is so numerous that joinder of all members is impracticable.

12. Questions of law and fact are common to the class.

13. The representative parties' claims are typical of the class's claims.

14. The guardian ad litem of the named plaintiffs will fairly and adequately protect the interests of the class.

15. Prosecuting separate actions by individual members of the class would create a risk of (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for defendant, and (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

16. Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

17. The questions of law and fact common to members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

### **Cause of Action**

18. Defendant's conduct violates the class members' Fourteenth Amendment right to due process of law, and will violate future class members' Fourteenth Amendment right to due process of law.

### **Wherefore plaintiff requests judgment on behalf of the class as follows:**

1. For certification of a class pursuant to F.R.Civ.P. 23(a), (b)(1), and (b)(2);
2. For preliminary and permanent declaratory and injunctive relief sufficient to remedy the unconstitutional conditions under which class members are confined, and under which future members of the class will be confined;
3. For reasonable attorney's fees and costs; and
4. For such other and further relief as the Court deems just.

Dated: December 20, 2021

Respectfully submitted,

/s/ James D. Leach

James D. Leach

Attorney at Law

1617 Sheridan Lake Rd.

Rapid City, SD 57702

Tel: (605) 341-4400

jim@southdakotajustice.com

Attorney for Plaintiff



JS 44 (Rev. 04/21)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Julie Irvine

(b) County of Residence of First Listed Plaintiff Minnehaha

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James D. Leach/Attorney at Law/1617 Sheridan Lake Rd/  
Rapid City, SD 57702/605 341 4400**DEFENDANTS**Jeremy Johnson, Administrator, South Dakota Human  
Services Center, sued in his official capacity

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 USC 1983**VI. CAUSE OF ACTION**

Brief description of cause:

Class action for due process violation for people held in jail for unconstitutional length of time without court-ordered attempt to restore competency

**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE